

Experts Agree: House Republicans' Partisan, Political Lawsuit Has Little Standing

With less than two weeks until the August district work period, House Republicans continue to ignore critical legislative priorities and are focusing their attention on a partisan and political lawsuit that will waste time and taxpayers' dollars. The [majority of Americans](#) agree that Speaker Boehner's lawsuit is a political stunt and will result in more wasteful spending, and that Congress should be more focused on taking action to create jobs. In addition, constitution experts, including several conservative legal scholars, have spoken out in opposition to the lawsuit, arguing that House Republicans have little standing to sue the President. Here is what they had to say:

Elizabeth Price Foley, Florida International University Professor, who was selected as a Republican witness at the Rules Committee hearing on July 16, and testified on their behalf:

"When a president delays or exempts people from a law — so-called benevolent suspensions — who has standing to sue him? Generally, no one. Benevolent suspensions of law don't, by definition, create a sufficiently concrete injury for standing. That's why, when President Obama delayed various provisions of Obamacare — the employer mandate, the annual out-of-pocket caps, the prohibition on the sale of 'substandard' policies — his actions cannot be challenged in court." [[The Daily Caller](#), 2/7/14]

Jack Goldsmith, Harvard Law Professor and former legal adviser to the General Counsel of the Department of Defense in the Bush administration:

"...the lawsuit will almost certainly fail, and should fail, for lack of congressional standing. Conservative legal thought used to maintain that standing was a vital element of the separation of powers, and used to resist institutional congressional lawsuits against the presidency as a constitutional solecism. But apparently not any more." [[Lawfare Blog](#), 6/30/14]

Andrew McCarthy, former Bush Justice Department Prosecutor: "[If the lawsuit were to succeed], we'd now be subjects of a judicial oligarchy—all future presidents, no matter how lawful their actions, would be subject to vexatious congressional lawsuits and court directives from the judiciary.' ... 'Everything asserted [in Boehner's memo] is either untrue or abject nonsense.'" [[National Review](#), 6/25/14]

Walter E. Dellinger III, former Acting Solicitor General of the United States and Partner at O'Melveny & Meyers LLP: "When government takes action that burdens a citizen, the citizen can rightly seek redress in the courts for his or her 'personal, particularized' and 'concrete' injury. The courts of this country do not exist, however, for the purpose of intruding into disputes between the elected branches of government on the proper interpretation and implementation of statutes. As Justice Scalia put it in his opinion in *Windsor v. United States*, the framers of the Constitution emphatically rejected a 'system in which Congress and the Executive can pop immediately into court, in their institutional capacity, whenever the President ... implements a law in a manner that is not to Congress's liking.'" [[Prepared Testimony](#), July 2014]

Simon Lazarus, senior counsel at the Constitutional Accountability Center: ““These claims fault the Obama administration for making necessary adjustments in timing and matching enforcement priorities with resources and technical, practical, humanitarian, and other exigencies,” said Lazarus. ‘But exercising presidential judgment in carrying laws into execution is precisely what the Constitution requires.’” [[Politico](#), 7/16/14]

“Lazarus derided Boehner’s effort as ‘A president’s political opponents seeking to inflate a routine administrative practice, a reasonable and necessary feature of all administrations’ roll-outs of complex laws, into a constitutional transgression and – literally – make a federal case of it.’” [[Washington Post](#), 7/17/14]

Charles Tiefer, University of Baltimore Law Professor: “The Speaker never told the House Counsel’s office to sue the President about anything remotely like this ‘faithful execution’ case, for very good reason – there is no standing and it is a bad idea for a Speaker to file such an embarrassing loser.” [[Press Release](#), 7/16/14]

Laurence H. Tribe, scholar of Constitutional law and Professor of Harvard University Law School: “Whatever might be motivating this misguided and potentially costly effort, I would urge the House not to facilitate it and thereby distort the carefully calibrated system of checks and balances that has stood our Republic in good stead for over two centuries.” [[Politics USA](#), 7/17/14]

“I am entirely persuaded, based on nearly a half-century of study and writing about our Constitution, that the proposed lawsuit would represent a wholly meritless attempt to invoke the jurisdiction of the federal judiciary at the behest of an institution that cannot plausibly allege, much less demonstrate, any distinctive injury to itself or its members.” [[Press Release](#), 7/16/14]

With several time-sensitive issues to address before the August district work period, including passage of President Obama’s supplemental request to address the humanitarian crisis at the border, it’s time for House Republicans to abandon their political gimmicks. The supplemental request to address the escalating humanitarian crisis is \$3.7 billion, but House Republicans claim that they’re reluctant to approve the request because it costs too much. But at the same time, they continue to waste taxpayer dollars on partisan issues, which is clearly a pattern for them:

Republican Government Shutdown	\$24 billion
Downgrade of the America's Credit Rating	\$1.3 billion
Select Committee on Benghazi	\$3.3 million
Defending the Defense of Marriage Act (DOMA)	\$2.3 million
Speaker Boehner's Lawsuit	TBD

It’s time for House Republicans to abandon this partisan stunt and return to the people’s business so we can address the issues that matter most to Americans.